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UNIFICATION OF MARITIME LAW - UNIVERSALISM ON TRIAL

by

THE HON. TAN BOON TEIK

Attorney-General of Singapore

It is certainly a privilege for me to be here this morning to address this very distinguished gathering of maritime lawyers.

I would like to extend a very warm word of welcome to all of you present here today, and to say how pleased I am that the organisers have chosen Singapore as the venue for this conference.

Mr. President, as the second largest port of the world, this island republic has a very close and special relationship with the sea. We Singaporeans have a direct interest in the orderly development of maritime law in all its many facets. We realise it is only within a stable and secure legal framework that we can with confidence conduct our economic relations with nations separated from us by the vastness of the oceans.

The theme of my address is the universality of maritime law. I would like in this brief address to take a look with you at maritime law as a universal discipline, and to consider what the future has in store for it. As it would be too ambitious to even attempt to scan the whole field, I propose to use, as the object of my study, international efforts at unifying legal rules on the carriage of goods by sea.

Uniformity has always been a distinctive characteristic of maritime law. As the shipping industry of the world operates in a multi-jurisdictional environment, there has always been a need to unify legal rules which apply to every aspect of its operation.

The search for uniformity in maritime law I suspect is almost as old as the history of maritime transportation itself. As long ago as the 2nd century A.D., the Roman Emperor Antonius is credited as having made a pronouncement in

its favour when dealing with a case of shipwreck. His rescript later found its way into the Digest of Justinian. He is supposed to have said, and, with apologies to those who know this, I quote from a translation:

> "I am indeed lord of the world, but the Law is the lord of the sea. This matter must be decided by the maritime law of the Rhodians, provided that no law of ours is opposed to it."

Rhodes was then the centre of maritime trade in Europe, and its maritime law prevailed throughout the Mediterranean and beyond. Despite their genius in other areas of the law, the Romans acknowledged the supremacy of Rhodes as the source of maritime jurisprudence. The Romans in turn became responsible for developing European maritime laws into a uniform and comprehensive code.

The Romans attached great importance not only to uniformity in maritime law; they applied the jus gentium to the entirety of their commercial relations with other peoples.

The Romans set an ideal which the world has tried to live up to ever since.

Their notion of the jus gentium, for instance, found expression in mediaeval England in this passage from the Yearbook. When dealing with a suit brought by an alien merchant, the Chancellor is supposed to have said:

> "This suit ... ought to be determined according to the law of nature in the chancery ... Merchants shall not be bound by our statutes where statutes introduce new law, unless they are declaratory of ancient law, that is ... the laws

of nature which is called by some the law merchant, which is a universal law throughout the world."*

Generations of peoples who have had to grapple with the legal dimension of man's relations with the sea have, consciously or unconsciously, echoed the sentiments of Antonius. I cite two examples from the more recent past. In 1932, Lord MacMillan in the famous Foscolo Mango** case had this to say when referring to the 1924 English Carriage of Goods by Sea Act. I quote:-

"It is important to remember that the Act of 1924 was the outcome of an International Conference and that the rules ... have an international currency. As these rules must come under the consideration of foreign Courts it is desirable in the interests of uniformity that their interpretation should not be rigidly controlled by domestic precedents of antecedent date, but rather that the language of the rules should be construed on broad principles of general acceptation."

A similar sentiment is enshrined in the United Nations Convention on the Carriage of Goods by Sea - the Hamburg Rules adopted in 1978. Article 3 of the Rules says:-

"In the interpretation and application of the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity."

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* Potter Historical Introduction to English Law, 4th Ed., p.183.

** 1932 A.C. 328.

Universalism in maritime law, and commercial law in general, is said to have achieved its height in the Middle Ages. This is true, of course, only if one takes a narrow Eurocentric view; much of the world at that time was in fact beyond the reach of European jurisprudence.

Even in Europe, however, this uniformity began to be eroded with the rise of nationalism, particularly in the 17th Century.

The industrial revolution of the 19th century vastly extended the European's trade and commercial horizon to encompass the entire globe. With this came the need to extend European maritime law on a world scale, something never attempted by mankind before.

It was in this setting that in 1897 the Comite Maritime International was established in Antwerp. This exclusively non-governmental organisation, representing private initiative and expertise, and supported by national maritime law associations throughout the world, such as your own, was dedicated to the unification of the world's maritime law. This unique organisation of maritime lawyers, with the untiring support of the Government of Belgium, has been responsible for all the major international conventions on merchant shipping which are in force today. The maritime world owes to this organisation a profound debt of gratitude for its contribution to the cause of unification.

One of the earliest projects undertaken by the Comite was the unification of rules concerning bills of lading. It was a bold attempt at resolving the conflicts between carrier interests and cargo interests under a sea carriage contract.

The efforts of the Comite led to the adoption of the Hague Rules of 1924. These Rules were to govern the relationship between shipper and carrier throughout the whole world right down to the present day.

As with all legislation, however, inadequacies began to reveal themselves under changed circumstances. And as is often the case, the first remedy thought of was to make piecemeal amendments. I would like to take a moment to refer to these attempts at up-dating the legislation.

It was the commercial world which took the first step in adapting the Hague Rules to modern conditions. The Gold Clause Agreement of 1950, drafted by the British Maritime Law Association, was a splendid example of how commercial men working together for their mutual interest are able to reach a modus vivendi to make an ambiguous and out-dated law work. In this case, it was the stipulation in the Hague Rules limiting carrier's liability to 100 pounds sterling "gold value" per package or unit. The Gold Clause Agreement, or its later amendment, in 1977, however, was a private agreement among the various interests in the shipping industry, centred around London; it does not qualify as an amendment to an international convention.

Then followed the Visby amendments of 1968, adopted as a result of the work of the Comite. These amendments dealt with some of the more pressing problems thrown up by experience gained from the operation of the Hague Rules over the decades.

The unit of account for the settlement of the carrier's liability has taken its own special place in the amendment process. The framers of the Visby Rules resorted to the franc

Poincare, pegged to gold - at that time the most stable store of value known. This, however, was abandoned in 1979, when another maritime conference organised at the initiative of the Comite, adopted the Special Drawing Right as the unit of account.

In the meantime, the United Nations had taken an initiative of its own, first through UNCTAD and then through UNCITRAL (the United Nations Commission on International Trade Law) to undertake a comprehensive revision of the Hague-Visby Rules. UNCITRAL was a newcomer to the field, but it enjoyed the moral authority of a world body, and it represented the whole spectrum of world opinion.

Right from the beginning, however, division of opinion along classical lines became apparent. In 1976, UNCITRAL, after several years of arduous work, adopted a draft convention, but with some of the crucial provisions on carrier's liability left blank for a diplomatic conference to fill in.

Filling in these blank spaces in the draft convention proved to be the most difficult part of the diplomatic conference which was eventually convened at Hamburg in 1978. Delegates spent many anguished days and nights in an attempt to work out a compromise package, using as their bargaining chips the monetary limits of liability and exemption clauses for fire and nautical fault. Finally, towards the very end of an eight-week conference, a compromise package was agreed, and the Convention as a whole adopted. The Convention is known, appropriately enough, as the Hamburg Rules.

Although not yet in force, it is generally assumed that the Hamburg Rules will eventually replace the Hague-Visby Rules.

Until then, however, the maritime world will have to live through a period, most likely a long period, of uncertainty, resulting from the existence of a multiplicity of legal regimes. The problem posed by the Hague-Visby group of instruments is already difficult. This is because governments may, and often do, accept a convention without at the same time accepting its amending protocols. At the moment, although most countries of the world have accepted the Hague Rules, only a handful have accepted the Visby amendments. Accessions to the original Hague Rules are still trickling in at the Foreign Affairs Ministry of the depositary government.

When and if the Hamburg Rules do come into force, the position, at least initially, will be even more complex. Then, the Hamburg Rules will exist side by side with the Hague-Visby Rules and their amendments. It does not require a great prescience for anyone to see the danger inherent in this of wide-spread forum-shopping when disputes have to be adjudicated. The position in fact will improve only when most countries of the world have made a decisive switch to Hamburg in place of the Hague/Visby group of rules. Judging from the many reservations about the Hamburg Rules which have been expressed since the Conference, it may indeed take quite some time before those Rules come into force, let alone become generally applicable throughout the world.

The longer nations take to acept the Hamburg Rules, the longer will be this difficult transitional period.

It may be appropriate to conclude my address by taking a moment to reflect on the future of unification of maritime law, drawing such conclusions as possible from our experience with the unification of rules on carriage of goods by sea. The difficulties are enormous. Not only do we live in a world in

which there are more nation-states than ever before, each sovereign and equal to every other; what is more, it is also a world in which economic and political power reside in different groups of states - the affluent few on the one hand and the disadvantaged but politically powerful on the other. The capacity of international conferences as a means for settling conflicts is seriously strained. It might not be extravagant to say that the apparent success in achieving agreement at international conferences is sometimes due to the effect of the laws of group dynamics, as much as to the fact that the underlying conflicts have been resolved to the satisfaction of all the interests represented. The Hamburg Rules may be a case in point. Even now, four years after the conference, voices can still be heard raising the self-same issues which were raised and debated at that conference. No major maritime country in the world has ratified the convention or acceded to it, although the number of signatories is impressive enough.

In other areas of maritime law, the increasing number of international conventions in recent years which have had difficulty securing the necessary ratifications for coming into force, is a source of concern.

If it is difficult to predict the future of unification, it is perhaps easier to stipulate the conditions for its success. These conditions must take into account the underlying reality of the world which I have just mentioned. It calls for a re-orientation of outlook. For one thing, it is necessary, in my view, for us all to accept the proposition that nations, small and large, weak and powerful, all have a role to play in international shipping legislation. There is the need to accept the universalisation of the legislative mechanism for the adoption of rules of maritime law. I suggest that in the world to-day, only a truly universally

representative body could formulate laws which have a chance of universal acceptance.

Secondly, there is the need for the international community to be more receptive of the results of the work of such international bodies.

Both these propositions, obvious though they are, are not always readily accepted in practice. Unless we are prepared to accept them, however, I fear that we will have to face increasing fragmentation in an area of human activity, where uniformity is vital.

While the dictates of the commercial needs of the world will always provide the basic conditions for uniformity, I suggest that it is the duty of all of us who in one way or another are concerned about the future of maritime law to assist in the unification process.

Your Association and its affiliates in other countries are in a unique position to assist in this process and to help the world avoid the danger of fragmentation. It is in the interest of every nation that maritime law remain on the pedestal of universalism, where it properly belongs.